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10 UNITED STATES DISTRICT COURT

11 EASTERN DISTRICT OF CALIFORNIA

12 NERSES VARDKE MARTIROSYAN,       ) 1:09-CV-01198 GSA HC  
13    ) Petitioner,                         )  
14    ) ORDER GRANTING PETITIONER LEAVE TO  
15    v.   )  
16    ) FILE A MOTION TO AMEND THE PETITION  
17    UNNAMED,                                 )  
  ) AND NAME A PROPER RESPONDENT  
   Respondent.                             )  
\_\_\_\_\_)

18   Petitioner is a detainee of the United States Bureau of Immigration and Customs  
19   Enforcement ("ICE") proceeding pro se with a petition for writ of habeas corpus pursuant to 28  
20   U.S.C. § 2241.

21   **DISCUSSION**

22   For a court to hear a petition for writ of habeas corpus, it must have jurisdiction over the  
23   prisoner or his custodian. United States v. Giddings, 740 F.2d 770, 772 (9th Cir.1984). A failure to  
24   name the proper respondent deprives a habeas court of personal jurisdiction. Brittingham v. United  
25   States, 982 F.2d 378, 379 (9th Cir. 1992); Dunne v. Henman, 875 F.2d 244, 249 (9th Cir.1989). The  
26   proper respondent in a federal habeas corpus petition is the petitioner's "immediate custodian."  
27   Brittingham, 982 F.2d at 379, quoting Demjanjuk v. Meese, 784 F.2d 1114, 1115 (D.C.Cir.1986)  
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1 (Bork, J., in chambers). The custodian "is the person having a day-to-day control over the prisoner.  
2 That person is the only one who can produce 'the body' of the petitioner." Brittingham, 982 F.2d at  
3 379, quoting Guerra v. Meese, 786 F.2d 414, 416 (D.C.Cir.1986) (Parole Commission is not  
4 custodian despite its power to release petitioner). Normally, the custodian of an incarcerated  
5 petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has  
6 "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.  
7 1992); see also Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). In a case such  
8 as this where a detainee is challenging his indefinite detention by ICE, the appropriate respondent  
9 would be the Attorney General of the United States.

10 Petitioner does not name a respondent in this matter. Therefore, the petition must be  
11 dismissed. However, the Court will give Petitioner the opportunity to cure the defect by amending  
12 the petition to name a proper respondent. See West v. Louisiana, 478 F.2d 1026, 1029 (5th  
13 Cir.1973), vacated in part on other grounds, 510 F.2d 363 (5th Cir.1975) (en banc) (allowing  
14 petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394 F.2d  
15 125 (9th Cir. 1968) (same). In the interest of judicial economy, Petitioner need not file an amended  
16 petition. Instead, Petitioner may file a motion entitled "Motion to Amend the Petition to Name a  
17 Proper Respondent" wherein Petitioner may name the proper respondent in this action.

18 **ORDER**

19 Accordingly, Petitioner is GRANTED thirty (30) days from the date of service of this order  
20 in which to file a motion to amend the instant petition and name a proper respondent. Failure to  
21 amend the petition and name a proper respondent will result in a recommendation that the petition be  
22 dismissed for lack of jurisdiction.

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24 IT IS SO ORDERED.

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Dated: July 14, 2009

26 \_\_\_\_\_ /s/ Gary S. Austin  
27 \_\_\_\_\_ UNITED STATES MAGISTRATE JUDGE  
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